



Admission and Appeal Guidance for own admission authority & VA and foundation schools and academies

Parental Common questions

1. How do I appeal for admission to a Voluntary Aided, Trust or Foundation School or Academy?

These appeals are handled independently of the Local Authority. You should initially contact the Chair of the Governing Body or the Headteacher of the school concerned.

Where the admission authority has refused admission on the grounds that to admit the child would breach the infant class size limit, the circumstances in which an Appeal Panel can uphold an appeal for this age group are **severely limited**.

The Appeal Panel can uphold an infant class size appeal where:

- it finds that the admission of additional children would not breach the infant class size limit; or
- it finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied; or
- it decides that the decision to refuse admission was not one, which a reasonable admission authority would make in the circumstances of the case.

As there are **very limited circumstances** where an Appeal Panel can uphold an appeal the percentage success rate of infant class size appeals is minimal. In considering whether you wish to appeal in such circumstances you need to be aware that these appeals can only be upheld on these limited grounds. Your personal reasons for wanting the school, however strongly you feel, cannot be taken into account unless any of the above circumstances apply. These limited circumstances give very little scope for an Appeal Panel to uphold your appeal. If you did not apply under social or medical circumstances the Appeal Panel cannot consider this as part of your appeal.

2. How does the Appeal Panel deal with this type of appeal?

Legislation means that with this type of appeal the Appeal Panel can **only review** the decision of the admission authority not to offer your child a place in an infant class at your preferred school. The Appeal Panel, therefore, is bound to dismiss cases, which fall outside these circumstances.

The admission authority will have refused admission on the grounds of a breach to infant class sizes limits and there are no measures that could be taken to avoid this without prejudice to efficient education or the efficient use of resources. The Appeal Panel cannot intervene because it disagrees with the decision that such prejudice has occurred, nor can it consider whether or not that prejudice outweighs parental considerations.

The Appeal Panel will consider whether the admission authority has made a reasonable case for stating that a breach of the infant class size limit would arise. It is not enough for the admission authority to show that the admission number for a school has already



been reached; it should demonstrate what measures it would have to take to comply with class size limits if an additional child were to be admitted.

The Appeal Panel must also consider whether the admission of an additional child would cause a future breach of infant class size limits. For example, if a school has a published admission number of 60 pupils arranged in three reception classes of 20 pupils each, which becomes two classes of 30 pupils each in Years 1 and 2. Admitting an extra child to reception year group would mean classes exceeding 30 pupils in Years 1 and 2, therefore there would be a breach of the infant class size limit.

The child would have been offered a place if the admission arrangements had been properly implemented or the child would have been offered a place if the admission arrangements had not been contrary to the mandatory provisions in the School Admissions Code and the School Standards and Framework Act 1998.

In considering an appeal under this criterion the Appeal Panel will consider the admission authority's published admission arrangements for the admission of pupils to decide if they were correctly applied to your child's individual case and if it agrees the admission arrangements comply with the mandatory provisions.

A case for stating that a breach of the infant class size limit would arise, it is not enough for the admission authority to show that the admission number for a school has already been reached; it should demonstrate what measures it would have to take to comply with class size limits if an additional child were to be admitted.

However, it is not enough to prove that there has been a mistake in implementing the school's admission arrangements. The Appeal Panel can only uphold an appeal where it is clear that a child would have been offered a place if the admission arrangements had been properly implemented or had complied with admissions law. There may be cases where even if the admission arrangements had been properly applied or complied with the mandatory provisions, the child may still not have been offered a place.

If the Appeal Panel identifies any unlawful admission criteria during the course of its deliberations it must refer these immediately to the local authority and the admission authority (if relevant). However, it is not the role of the Appeal Panel to reassess the capacity of the school.

The decision to refuse admission was not one which a reasonable admission authority would make in the circumstances of the case:

If an appeal is not upheld because the admission arrangements did not comply with the mandatory requirements or were not correctly or impartially applied, the Appeal Panel will then consider whether the admission authority's decision to refuse your child a place at your preferred school was not one which a reasonable admission authority would make in the circumstances of your case. The threshold for this is high as the Appeal Panel will need to be satisfied that the decision to refuse to admit a child was 'perverse in the light of the admission arrangements' i.e. it was 'beyond the range of responses open to a reasonable decision maker' or 'a decision which is so outrageous



in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it'.

It is not the usual meaning of perverse or reasonable because, in this situation, it is the legal meaning and is known as 'Wednesbury unreasonable', which refers to a court case of that name. In simpler terms this means it is an illogical decision or irrational/widely ridiculous decision when looking at the facts of the case.

Upholding an appeal

Having looked at all these matters, if an Appeal Panel upholds an appeal, the child has a legal right to be admitted to the school. In these circumstances, the admission authority must still ensure that the school complies with the infant class size limit.

However, in multiple appeals where the Appeal Panel finds a number of children would have been offered places under the grounds detailed above but to admit that number would seriously prejudice the provision of efficient education or efficient use of resources, the Appeal Panel must move to a second stage. At this stage, it must compare each appellant's case and decide which, if any, to uphold. Where a school can admit a certain number of additional children without breaching the infant class size limit then the Appeal Panel must uphold appeals for at least that number of children.

If it is clear that your child would have been offered a place had the admission arrangements been properly implemented or not in contravention of the mandatory requirements then the Appeal Panel must uphold your appeal, except where there are a significant number of children affected and to admit all would cause serious prejudice. If the Appeal Panel find this it must move to stage two.

The Appeal Panel then has to decide whether to admit additional child(ren) would "prejudice efficient education or the efficient use of resources", that is have a damaging effect on the school. It is for the representative of the Admission Authority to satisfy the Appeal Panel that this is the case and that the school has reached its published admission number (i.e. is full in the age group) and that prejudice would arise.

At this stage you should raise any issues or questions you have regarding the case made on behalf of the school and/or how places were allocated.

If the Appeal Panel find that the admission of additional children would not prejudice the provision of efficient education or the efficient use of resources it must uphold your appeal.

However, in multiple appeals where number of children would have been offered a place and the Appeal Panel agree that to admit that number would cause serious prejudice it must progress to the second stage.

NB - If the Appeal Panel identifies any unlawful admission criteria during the course of its deliberations it must refer these immediately to the local authority and the admission authority (if relevant). However, it is not the role of the Appeal Panel to



reassess the capacity of the school but it should consider the impact of admitting additional children in terms of the organisation and size of classes, availability of teaching staff and the effect of children already at the school.

Second stage (balancing stage)

If the Appeal Panel accepts the Admission Authority's case that "prejudice" would occur, it must then balance the prejudice to the school against your case for your child to be admitted to the school. The Appeal Panel will use its discretion balancing between the degree of prejudice and the weight of the parental factors. The Appeal Panel carefully considers your case and that of the Admission Authority and makes its decision accordingly. If the Appeal Panel decides your case is exceptional in this way then it must uphold your appeal. The Appeal Panel will take into account everything you and the Admission Authority's representative put forward at the hearing, as well as everything presented in writing. The Admission Authority is allowed to submit details of any other school place you have been offered but you are also allowed to state why this school is less suitable. The Appeal Panel must not take into account where your child is on any waiting list.

At this stage you should raise any issues or questions you have regarding why your child should be given a place at the school in question and/or how your application was processed.

At the second stage, decisions on individual appeals are based on your personal circumstances. However, if the Appeal Panel finds there are more cases that outweigh prejudice than the school can admit, it must compare cases and uphold those with the strongest case for admission.

It is therefore important that you or your representative put forward all the reasons, at each stage, you believe are important to your case and that you summarise the key points at the end of the hearing.

You should also be aware that your appeal might be part of a grouped set of appeals, running over one day or longer. In these circumstances no decisions will be made until all appeals for the same year group, within that grouped set, have been heard. Please note that appeals are normally heard alphabetically based on family name.

3. How much notice of the appeal hearing date will I have?

Letters/emails notifying parents of appeal dates and times are sent in the order in which appeals are heard. In line with statutory guidance, these letters/emails will be sent at least 10 school days in advance of the hearing. In certain exceptional circumstances we might ask parents to agree to a shorter notice period but this would be discussed on an individual basis. If you lodge appeals for more than one school you will get a separate date for each appeal, which could be some weeks apart. Due to the volume of appeals these dates will often not be in the order you listed your preferences.

If you have provided an email address on your appeal form, details of your hearing may be sent via email rather than in a letter

4. What happens after I return my appeal form?



Completed appeal forms are not routinely acknowledged. If you wish receipt of your appeal to be acknowledged you must send a stamped self-addressed envelope with the form. Appeal forms are received from many parents/guardians throughout the county. Appeals are processed as quickly as possible; however, during the peak period (March to July) delays may occur. Although you will receive the statutory 10 school days' notice of your appeal hearing date and time, it will not always be possible to give you any earlier notice.

Please note that appeals are not heard during any of the school holidays, including summer school holidays.

If you are unable to attend your appeal hearing at the notified time, and it is not reasonably practicable to offer an adjourned hearing date, your appeal will be dealt with on paper, using the information available, including the information you submitted in your appeal form. Please note that if you are unable to attend the hearing the Appeal Panel will not be able to ask you any supplementary questions that may arise.

Whether you choose to attend your appeal hearing or not, you will receive copies of any information or documents which are to be put before the Appeal Panel and the written statement from the Admission Authority outlining their case. The deadline for sending this paper work is set by each admission authority and so may vary. Details should be published on each admission authority's website.

5. What if I have a disability?

Do please let us know if you have any disabilities or special requirements and need assistance. We will try and meet these as far as the venue is concerned.

6. What if I need an interpreter or signer?

You may have an interpreter or signer at your appeal hearing. If you would like us to arrange this for you please tell us which language you require on the appeal form. Alternatively, if you would prefer, you may arrange your own interpreter. If you intend to do this, please let us know seven days before the hearing.

7. What happens after my appeal?

After your appeal has been heard you and the relevant admission authority will be notified of the decision. If your case was one of a group of appeals for the same year group, you will not be notified of the decision until all of the appeals for the school have been heard. This may mean that you will have to wait a few days for the decision of your appeal. You will receive an initial letter with just the decision and a detailed decision letter giving the Appeal Panel's reasons will follow this. The detailed letter will follow as quickly as possible after the decisions have been made and ideally within 5 working days. However, due to the volume of work during the busy period (March – July) this may not always be possible.

The decision of the Appeal Panel is binding upon the Admission Authority and the school.



The Admission Authority do not play any part in the decision making process with regard to your appeal and cannot change or comment on the decision of an Independent Appeal Panel.

If your appeal has been unsuccessful and you have not accepted a place at an alternative school, you will need to contact:

- Shropshire; <http://www.shropshire.gov.uk/school-admissions/> Telephone: 0345 678 9000
- Herefordshire; https://www.herefordshire.gov.uk/info/200144/schools_and_education
- **The relevant local authority schools admissions sections** for more information on schools in your area.

8. Is the Appeal Panel's decision final?

The decision of the Appeal Panel is binding upon the Admission Authority if your appeal is upheld. If your appeal is unsuccessful there is no further right of appeal to the Admission Authority. If your appeal is successful you will need to confirm with the relevant Admission Authority which place you wish to accept.

9. Can I complain after the appeal?

The Local Government Ombudsman (LGO) can investigate complaints about maladministration on the part of an Appeal Panel for maintained schools, excluding academies. Complaints can be made by calling the LGO Advice Team on 0300 061 0614 or via an on line form at <http://www.lgo.org.uk/>. The Local Government Act 1974 provides that the Ombudsman may not investigate a complaint where there is a right to go to a statutory tribunal. He cannot question a decision by a Local Authority not to offer a child a place at a particular school, as there is a right of appeal.

Complaints about maladministration in respect of Appeal Panels for academies and free schools can be made to the Education Skills Funding Agency (ESFA). There is a special procedure for dealing with admission appeals complaints, which can be downloaded from the DfE website.

10. What if I feel the decision of the Appeal Panel was wrong in law?

If anyone concerned with the appeal (you as the parent, or the Admission Authority) consider that the decision of the Appeal Panel was legally in error, any one of them could apply for a judicial review. If a judicial review is granted, the Court would consider the lawfulness of the Appeal Panel's decision. If it found the Appeal Panel's decision to be unlawful or unreasonable (irrational or perverse legally), it could overturn the decision, or it could order the Admission Authority to set up a fresh appeal hearing with new panel members.

11. Can I appeal again if my appeal is rejected?

It is not normally possible to appeal again during the same school year. This is because the Admission Authority will not usually consider repeat applications for the same school year unless you have a significant change in circumstances relevant to your application. Unless your repeat application to the Admission Authority is allowed, no fresh appeal can arise.